

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	File Number: EB-FIELDNER-12-00004392;
L. Stanley Wall)	EB-10-PA-0115
)	NAL/Acct. No.: 201132340008
Licensee of FM Station WLSW)	FRN: 0010019792
Scottsdale, Pennsylvania)	Facility ID No.: 36116

FORFEITURE ORDER

Adopted: January 8, 2014

Released: January 8, 2014

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand five hundred dollars (\$7,500) to L. Stanley Wall, licensee of FM Station WLSW (Station), Scottsdale, Pennsylvania, for willfully and repeatedly violating Section 73.3526(e)(12) of the Commission's rules (Rules).¹ The noted violations involved Mr. Wall's failure to maintain and make available the quarterly issues/programs lists in the local public inspection file.

II. BACKGROUND

2. On April 16, 2010, an agent from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) conducted an inspection with the Station's office assistant at the Station's main studio located at 2532 Springfield Pike (Route 711), Connellsville, Pennsylvania. The agent reviewed the materials in the Station's public inspection file and found that the file did not contain any quarterly issues/programs lists for the current license term, *i.e.*, it was missing fifteen quarters of issues/programs lists.²

3. In response to a Letter of Inquiry issued by the Philadelphia Office,³ Mr. Wall admitted that the public inspection file did not contain the issues/programs lists on the day of the inspection, but stated that "[w]e could tell that a person or persons had gone through the file and that some items had been removed. . . ."⁴ Mr. Wall committed to "replacing the missing files that we had copies of and putting

¹ 47 C.F.R. § 73.3526(e)(12).

² The current license term began when the license renewal application was granted on July 28, 2006. *See* BRH-20060329ABN.

³ Letter from Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, to L. Stanley Wall (June 10, 2010) (*June 2010 LOI*) (on file in EB-FIELDNER-12-00004392).

⁴ Response from Chris Molton, Station Manager for L. Stanley Wall, via electronic mail to David Dombrowski, Electronic Engineer, Philadelphia Office, Northeast Region, Enforcement Bureau, at 1 (July 30, 2010) (on file in EB-FIELDNER-12-00004392) (*July 2010 LOI Response*). Mr. Wall stated that there were several weekend Station announcers who were suspected of going through the Station's files in order to obtain information about the Station's financial condition. *Id.*

together new files for those items that we do not have copies of.”⁵ Mr. Wall further stated that, to avoid any problems in the future, the Station planned to make copies of major parts of the file for storage in another location.⁶

4. On February 7, 2011, agents conducted a follow-up inspection with the Station’s manager at the Station’s main studio. The agent reviewed the materials in the Station’s public inspection file and found that the file only contained one issues/programs list (for 3rd Quarter 2010), *i.e.*, it was now missing a total of seventeen quarters of issues/programs lists. In response to another Letter of Inquiry issued by the Philadelphia Office,⁷ Mr. Wall admitted that the public inspection file was missing quarterly issues/programs lists on the day of the inspection, but claimed that the missing lists had been moved to storage.⁸ Mr. Wall further claimed that many of the files in storage were lost or damaged when part of the roof on an adjoining building collapsed from the weight of snow.⁹ During the inspection on February 7, 2011, however, station employees did not inform the agent that the missing issues/programs lists had been moved to storage in another building or that those files may have been lost or damaged. In addition, although Mr. Wall reported in the *March 2011 LOI Response* that any files that they could find, save, or reconstruct would be provided,¹⁰ no such files were ever provided.

5. On June 17, 2011, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture (*NAL*)¹¹ in the amount of \$15,000 to Mr. Wall for his failure to maintain and make available a complete public inspection file for the Station. Mr. Wall submitted a response to the *NAL* requesting a cancellation or reduction of the proposed forfeiture on the ground that the violation was not willful because the issues/programs lists were missing for reasons outside his control — a roof collapse and employee theft.¹² In addition, Mr. Wall claims that a cancellation or reduction is warranted based on his history of compliance with the Rules and his inability to pay.¹³

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹⁴ Section 1.80 of the Rules,¹⁵ and the *Forfeiture Policy Statement*.¹⁶ In examining Mr. Wall’s response, Section 503(b)(2)(E) of the Act requires that the

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, to L. Stanley Wall (Mar. 9, 2011) (on file in EB-FIELDNER-12-00004392) (*March 2011 LOI*).

⁸ Response from L. Stanley Wall to the Philadelphia Office, Northeast Region, Enforcement Bureau, at 1 (Mar. 29, 2011) (on file in EB-FIELDNER-12-00004392) (*March 2011 LOI Response*).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *L. Stanley Wall*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 8506 (Enf. Bur. 2011) (*NAL*).

¹² Letter from L. Stanley Wall to the Philadelphia Office (July 14, 2011) (on file in EB-FIELDNER-12-00004392) (*NAL Response*).

¹³ *Id.*

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁷ As discussed below, we have fully considered Mr. Wall's response to the *NAL* in light of these statutory factors and find that cancellation of the forfeiture is not warranted. However, we find that a forfeiture reduction is justified based on Mr. Wall's inability to pay.

7. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM or FM station shall maintain a public inspection file containing the material relating to that station described in Section 73.3526(e) of the Rules.¹⁸ Specifically, Section 73.3526(e)(12) requires licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.¹⁹ This list is known as the radio issues/programs list and copies of the list must be maintained in the file until final action has been taken on the station's next renewal application.²⁰ On April 16, 2010, agents from the Philadelphia Office found that the Station's public inspection file did not contain any issues/programs lists since the Station's current license term began in 2006. During a follow-up inspection on February 7, 2011, agents found that the public inspection file contained only one quarterly issues/programs list.

8. The evidence does not support Mr. Wall's claim that he maintained the issues/programs lists and that they were unavailable during the inspections because of events outside his control.²¹ During the April 16, 2010 inspection, Station staff did not provide any explanation for why the public inspection file did not contain any issues/programs lists. In response to the *June 2010 LOI*, Mr. Wall claimed that "[w]e could tell that a person or persons had gone through the file and that some items had been removed. . . ."²² However, when Mr. Wall responded to the *March 2011 LOI* issued after the February 7, 2011 inspection, he provided an entirely different explanation, reporting for the first time that some of the lists had been moved to a storage facility and later sustained water damage when the roof of the storage facility collapsed on an undisclosed date.²³ Now Mr. Wall reports in the *NAL Response* that the roof collapsed in "the late fall of 2009 or early winter," which pre-dates the agents' first inspection on April 16, 2010, when Station staff provided no explanation for the missing issues/programs lists. In light of Mr. Wall's conflicting and unsubstantiated accounts of why the issues/programs lists were missing, we find Mr. Wall's assertions unreliable. We therefore conclude that Mr. Wall willfully violated Section 73.3526(e)(12) of the Rules. In addition, because agents found that the public inspection file was missing issues/programs lists on more than one day, we also find that Mr. Wall repeatedly violated Section 73.3526(e)(12) of the Rules.

9. Mr. Wall asserts that his inability to pay warrants a reduction in the proposed forfeiture.²⁴ We agree. With regard to an individual's or entity's inability to pay claim, the Commission has

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ 47 C.F.R. § 73.3526(a)(2).

¹⁹ 47 C.F.R. § 73.3526(e)(12).

²⁰ *Id.*

²¹ See *July 2010 LOI Response*; *March 2011 LOI Response*.

²² *July 2010 LOI Response* at 1.

²³ *March 2011 LOI Response* at 1.

²⁴ *NAL Response* at 4-5. Mr. Wall also argues that his history of compliance with the Act and Rules warrants a reduction in the proposed forfeiture. *Id.* Given that we are already substantially reducing the forfeiture based on Mr. Wall's inability to pay, we need not reach this claim.

determined that gross revenues are generally the best indicator of an ability to pay a forfeiture.²⁵ We have reviewed the documents that Mr. Wall submitted in support of his inability to pay claim and find a sufficient basis for reducing the forfeiture to \$7,500.²⁶ However, we caution Mr. Wall that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.²⁷ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.²⁸ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Wall's financial circumstances.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, L. Stanley Wall **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand five hundred dollars (\$7,500) for violation of Section 73.3526(e)(12).²⁹

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order.³⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³¹ L. Stanley Wall shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

12. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters

²⁵ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

²⁶ Mr. Wall requested that he be permitted to make installment payments in the event a forfeiture is assessed. *NAL Response* at 6. A request for an installment plan can be made as set forth *infra* at para. 13 of this Forfeiture Order.

²⁷ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

²⁸ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures). See *Michael W. Perry*, Forfeiture Order, 27 FCC Rcd 2281 (Enf. Bur. 2012) (reducing forfeiture based on inability to pay, but warning that future violations of the same kind may not be reduced due to financial circumstances).

²⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526(e)(12).

³⁰ 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 504(a).

³² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

“FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to L. Stanley Wall at R.D. #37, Box 56 Greensburg, Pennsylvania 15601 and 167 Slate Run Road Greensburg, Pennsylvania 15601-6449.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

³³ See 47 C.F.R. § 1.1914.